

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Implementation of Section 22)
 of the Cable Television)
 Consumer Protection and)
 Competition Act of 1992)
)
 Equal Employment Opportunities)

MM Docket No. 92-261

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

1. The National Association of Broadcasters ("NAB"),¹ by counsel, hereby submits its Reply Comments in the above-referenced proceeding. In these Reply Comments, NAB responds to Comments regarding the Commission's broadcast EEO proposals which were filed by the Office of Communication of the United Church of Christ ("UCC") and by the National Association for the Advancement of Colored People ("NAACP").²

2. NAB observed in its initial Comments that the Commission's Notice generally proposed an appropriate response to the mandates of Sec. 22(f) of the Cable Act, as explicated by the Cable Act Conference Report ("the

¹ NAB is a nonprofit, incorporated association which serves and represents America's radio and television broadcast stations and networks.

² The Commission's proposals appear in its Notice of Proposed Rulemaking ("Notice"), FCC 92-539, 58 Fed. Reg. 3929 (Jan. 12, 1992).

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Conference Report").³ The Commission took the required and proper approach by following the specific instructions of the Conference Report in its proposed implementation of Sec. 22(f).

3. UCC and the NAACP ask the Commission to deviate from that required approach. UCC suggests that the Cable Act and Conference Report intended that the mid-term EEO review being instituted should be "a review of the station's overall [EEO] efforts."⁴

4. UCC's suggestion, however, is absolutely contrary to the instruction of the Conference Report, which states that this review is to be conducted by the FCC staff, comparing the work force data submitted to the FCC in the first two Forms 395 filed following the grant of a station's license renewal with the station's area labor force in the manner customarily used by the Commission, and applying the EEO processing guidelines in effect on September 1, 1992. If the FCC were to act differently it could do so only by intentionally ignoring the intent of Congress.

5. UCC also proposes that if the mid-term review suggests the need for improvement in the station's EEO efforts, a renewal determination of a lack of improvement should generate a presumption that the licensee intended not

³ H.R. Rep. No. 862, 102d Cong., 2d Sess. (1992).

⁴ UCC Comments, at pp. 23-24.

to comply and "should have a direct bearing on the amount of financial forfeiture and type of sanction."

6. Again, UCC's proposal is contrary to the intent of Congress. The Conference Report clearly states that an FCC staff letter to the station suggesting the need for improvement based on the mid-term review "is not and is not to be treated for any purpose as a Commission sanction of the station's EEO practices." This being the case, the letter could not presumptively indicate a failure to comply. As the Commission proposed in the Notice, a "finding of deficiency" as to the statistical comparison conducted by the staff should constitute "nothing more than an early warning that a licensee's overall EEO efforts may need improvement."

7. The NAACP's Comments contain numerous proposals and remarks which address matters beyond the scope of this proceeding, limited by its terms to implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992. NAB will not respond here to those proposals nor to the statements in the Comments based on fallacious or erroneous premises nor to the unsubstantiated allegations of broadcaster EEO wrongdoing and of FCC misfeasance contained in the Comments.

8. As to Section 22 (f) of the Cable Act, regarding broadcast television EEO, the NAACP has made

several proposals which are either specifically precluded by the Act or contrary to Congressional intent.

9. Pp. 15-18 of the NAACP's Comments contain a lengthy list of proposed changes in the FCC Form 396 Broadcast EEO Program Report. The plain language of new Sec. 334(a) of the Communications Act bars such action, since it states that the Commission "shall not revise ... the forms used by such licensees and permittees to report pertinent employment data to the Commission." The Conference Report explicates this instruction, noting that this form is to continue to be filed with the same format, content, terms and instructions as in effect on September 1, 1992.

10. On pp. 24-25, the NAACP proposes a midterm EEO review for radio. Notwithstanding its protestations in p. 25 of the Comments, this new NAACP proposal is clearly beyond the scope of this proceeding, which addresses only EEO requirements for visual media under Section 22. Neither the Congress nor the Commission have considered the merits, if any, of the proposal, nor can the industry be said to have been aware that such matters might be dealt with by the Commission in this matter. NAB does not believe it would be appropriate to respond substantively to this procedurally improper proposal.

11. NAACP's proposals on pp. 26-27 call for a comprehensive midterm review of television station

employment practices and midterm sanctions based on these reviews. These proposals are similar to those of UCC, and inappropriate for the same reason -- they are contrary to the intent of Congress as clearly stated in the Conference Report.

Respectfully submitted,

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March 4, 1993


CERTIFICATE OF SERVICE

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the National Association of Broadcasters" in MM Docket No. 92-261 was sent, via first class mail, on this date, March 4, 1993, to the following:

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